IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDCITION

WRIT PETITION NO.1810 OF 2004

Northern India Co-operative
Housing Society Ltd. .....Petitioner.

V/s

State of Maharashtra & Ors. .....
Respondents.

Mr. Rajiv Narula with Mr. Dilip Shukla i/b M/s. P.V. Nichani & Co. for the Petitioner.

Mr. Milind More, AGP for Respondent Nos. 1 & 2.

Mr. G.D. Utangale for Respondent No.3.

Ms. A.R. Joshi for Respondent Nos. 4, 5 & 6.

Mr. Atul Rajadhaksha with I.G. Buddhadev for Respondent Nos. 7 and 8.

CORAM: V.M. KANADE, J.
DATE : 4th May, 2007.

P.C.:-

1. Parties have settled the matter and have filed the Minutes of Order. The Minutes of Order are signed by the Counsel appearing for the Petitioner, Respondent Nos.7 and 8. The Minutes of Order are, however, not signed by Respondent Nos. 1 to 6.

2. In the affidavit in reply filed by the Municipal Corporation, it is stated that they have perused the consent Minutes of the Order and they submit to the orders passed by this Court. Similar statement is made by the learned AGP appearing on behalf the State and learned Counsel appearing on behalf of SRA.

3. Before passing an order on the Minutes which are tendered, it is essential to very briefly state the facts of the present case in order to ensure that there is no dispute at a subsequent stage over the Minutes which are filed.

4. The Petitioner, in this case, is a Co-operating Housing Society and the 4th Respondent - MCGM agreed to give on lease plot Nos. 17 to 21 situated at Sewri Wadala in favour of the Petitioner on 30/07/1947. On 10/07/1960, the aforesaid five plots were subdivided in to 50 plots. Out of the said 50 plots, Plot No. 21/6 (Pt) admeasuring 2883 sq. metres was reserved as an amenity plot for construction of Club House. Some time in 1964, the Petitioner took possession of the said

plot No.21/6 (Pt) from the 4th Respondent and one plot admeasuring 759.19 sq. metres viz. Plot No. 21/5 which was allotted to one of the members of the Society viz. Mr. Ramesh Shah. However, possession of the said plot could not be handed over to the said member since, by that time, the plot was encroached upon by the slum dwellers. On 29/01/1970, the Petitioner - Society was granted commencement certificate for the construction of Club House on the said plot No.21/6 (Pt). However, the work could not be completed.

5. On 09/05/2001, two separate Notifications were issued by Respondent No.5 under section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and two plots viz. Plot No. 21/5 and plot No. 21/6 (Pt) admeasuring 1012.30 sq. metres. was declared as slum under the said Act. Thereafter, on 08/03/2002, further area of 828.51 sq. metres. out of the said plot No. 21/6 (Pt) was also notified and declared as slum rehabilitation area in order to accommodate an eligible hutment dwellers.

6. The Petitioner challenged the order of declaration of the additional area of 828.51 sq. metres. out of Plot No.21/6 (Pt) by filing an appeal before the Maharashtra Slum Areas Special Tribunal. This appeal was, however, dismissed on 23/07/2003 by the Tribunal. The Petitioner, thereafter, filed the present Petition challenging the Notification dated 08/03/2002. It must be mentioned here that Respondent Nos. 7 and 8 had already filed a scheme with SRA for redevelopment of the slum. Thereafter, on 19/08/2004, the 4th Respondent - Municipal Corporation terminated the lease of plot No. 21/5 and plot No. 21/6 (Pt). In view of the subsequent development, the Petitioner amended the Writ Petition on 08/10/2004 and also challenged the termination of agreement of lease of Plot No.21/5 and 21/6 (Pt). On 27/10/2004, this Court granted rule and also granted stay to the order passed by the 3rd Respondent who had declared the additional area of 828.51 sq. metres out of plot No.21/6 (Pt) as slum rehabilitation area and further restrained the Respondent Nos.4 to 6 from taking possession and/or taking any further action pursuant to their notice dated 19/08/2004. Against this order, Respondent Nos. 7 and 8 preferred an

appeal before the Division Bench. During the course of hearing before the Division Bench on 03/10/2005, Respondent No. 7 and the Petitioner herein made a statement that the parties had mutually settled the matter and that the Consent Terms would be filed before this Court and, accordingly, the appeal was withdrawn. The Consent Terms were accordingly executed by the Petitioner and Respondent No.7 on 31/10/2005 and pursuant to the Consent Terms, an agreement was also executed between the Petitioner - Society and Respondent No.7. These Consent Terms and draft agreement were forwarded to the 4th Respondent - MCGB and the 3rd Respondent - SRA on 20/05/2006. On 05/04/2007, an affidavit has been filed by the Municipal Corporation that in view of the Consent Terms, they are submitting to the orders of the Court. In view of this affidavit filed by Respondent No.4, a supplementary agreement also has been executed between the Petitioner and Respondent No.7.

7. The Consent Terms, accordingly, are taken on record and marked as Exhibit ‘X’ for the purpose of identification.

The Consent Terms are signed by the Petitioner and Respondent Nos. 7 and 8. The supplementary agreement executed between the Petitioner and Respondent No.7 dated 30/04/2007 is also taken on record. Thereafter, Minutes of the Order have been filed by the Petitioner and Respondent Nos. 7 and 8 in which the Petitioner has stated that the Petitioner does not wish to challenge the order passed by the 3rd Respondent, declaring an area of 828.51 sq. metres out of Plot No.21/6 (Pt) as slum rehabilitation area. The Respondent Nos. 7 and 8 have in turn stated in the Minutes of the Order that they would construct a Club House which was specifically reserved for the said purpose in the lay out as an amenity plot at their own costs. The terms and conditions of settlement are already elaborately mentioned in the Consent Terms which are taken on record.

8. Ms. Joshi, the learned Counsel appearing on behalf of Municipal Corporation, on instructions from Mr. Vilas Tukaram. Sable, Sub-Engineer, Estate Department, states that in view of the settlement between the parties, they do not wish to press the notice of termination which has been

issued by the Corporation on 19/08/2004 at this stage. The notice of termination therefore is set aside and quashed.

9. In view of these circumstances, order is passed in terms of the Minutes of the Order dated 04/05/2007. It is, however, clarified that the area covered by SRA scheme shall be leased by Respondent No.4 to the Co-operative Society formed on the said SRA area. Rest of the area shall remain with the Petitioner as per the terms of the original agreement of lease. The Petitioner shall give NOC for development under the SRA scheme. This direction is already incorporated in para 3 of the Minutes of the Order. In view of this, Minutes of the Order dated 04/05/2007 are taken on record and marked as Exhibit 'X(1)' for the purpose of identification.

10. Writ Petition is disposed of in terms of the Minutes of the Order and the order passed hereinabove.

(V.M. KANADE, J.)